

**§ 125.17 Who decides if a contract opportunity for SDVO competition exists?**

The contracting officer for the contracting activity decides if a contract opportunity for SDVO competition exists.

**§ 125.18 What requirements are not available for SDVO contracts?**

A contracting activity may not make a requirement available for a SDVO contract if:

(a) The contracting activity otherwise would fulfill that requirement through award to Federal Prison Industries, Inc. under 18 U.S.C. 4124 or 4125, or to Javits-Wagner-O'Day Act participating non-profit agencies for the blind and severely disabled, under 41 U.S.C. 46 *et seq.*, as amended; or

(b) An 8(a) participant currently is performing that requirement or SBA has accepted that requirement for performance under the authority of the section 8(a) program, unless SBA has consented to release of the requirement from the section 8(a) program.

**§ 125.19 When may a contracting officer set-aside a procurement for SDVO SBCs?**

(a) The contracting officer first must review a requirement to determine whether it is excluded from SDVO contracting pursuant to § 125.18.

(b) If the contracting officer determines that § 125.18 does not apply, the contracting officer should consider setting aside the requirement for 8(a), HUBZone, or SDVO SBC participation before considering setting aside the requirement as a small business set-aside.

(c) If the CO decides to set-aside the requirement for competition restricted to SDVO SBCs, the CO must:

(1) Have a reasonable expectation that at least two responsible SDVO SBCs will submit offers; and

(2) Determine that award can be made at fair market price.

**§ 125.20 When may a contracting officer award sole source contracts to SDVO SBCs?**

A contracting officer may award a sole source contract to an SDVO SBC

only when the contracting officer determines that:

(a) None of the provisions of §§ 125.18 or 125.19 apply;

(b) The anticipated award price of the contract, including options, will not exceed:

(1) \$5,000,000 for a requirement within the NAICS codes for manufacturing, or

(2) \$3,000,000 for a requirement within all other NAICS codes;

(c) A SDVO SBC is a responsible contractor able to perform the contract; and

(d) Contract award can be made at a fair and reasonable price.

**§ 125.21 Are there SDVO contracting opportunities at or below the simplified acquisition threshold?**

Yes, if the requirement is at or below the simplified acquisition threshold, the contracting officer may set-aside the requirement for consideration among SDVO SBCs using simplified acquisition procedures or may award a sole source contract to an SDVO SBC.

**§ 125.22 May SBA appeal a contracting officer's decision not to reserve a procurement for award as an SDVO contract?**

The Administrator may appeal a contracting officer's decision not to make a particular requirement available for award as an SDVO sole source or a SDVO set-aside contract at or above the simplified acquisition threshold.

**§ 125.23 What is the process for such an appeal?**

(a) *Notice of appeal.* When the contracting officer rejects a recommendation by SBA's Procurement Center Representative to make a requirement available for award as an SDVO contract, he or she must notify the Procurement Center Representative as soon as practicable. If the Administrator intends to appeal the decision, SBA must notify the contracting officer no later than five business days after receiving notice of the contracting officer's decision.

(b) *Suspension of action.* Upon receipt of notice of SBA's intent to appeal, the contracting officer must suspend further action regarding the procurement until the Secretary of the department or head of the agency issues a written